

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE BILL 702

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

James R.J. Strickler

AN ACT

RELATING TO CRIMINAL SENTENCING; PROVIDING ADDITIONAL VIOLENT FELONIES FOR PURPOSES OF MANDATORY LIFE IMPRISONMENT FOR THREE VIOLENT FELONY CONVICTIONS; AMENDING A SECTION OF THE CRIMINAL SENTENCING ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 31-18-23 NMSA 1978 (being Laws 1994, Chapter 24, Section 2, as amended) is amended to read:

"31-18-23. THREE VIOLENT FELONY CONVICTIONS--MANDATORY LIFE IMPRISONMENT--EXCEPTION.--

A. When a defendant is convicted of a third violent felony, and each violent felony conviction is part of a separate transaction or occurrence, and at least the third violent felony conviction is in New Mexico, the defendant shall, in addition to the sentence imposed for the third

underscored material = new  
[bracketed material] = delete

1 violent conviction when that sentence does not result in death,  
2 be punished by a sentence of life imprisonment. The life  
3 imprisonment sentence shall be subject to parole pursuant to  
4 the provisions of Section 31-21-10 NMSA 1978.

5 B. The sentence of life imprisonment shall be  
6 imposed after a sentencing hearing, separate from the trial or  
7 guilty plea proceeding resulting in the third violent felony  
8 conviction, pursuant to the provisions of Section 31-18-24 NMSA  
9 1978.

10 C. For the purpose of this section, a violent  
11 felony conviction incurred by a defendant before ~~[he]~~ the  
12 defendant reaches the age of eighteen shall not count as a  
13 violent felony conviction.

14 D. When a defendant has a felony conviction from  
15 another state, the felony conviction shall be considered a  
16 violent felony for the purposes of the Criminal Sentencing Act  
17 if that crime would be considered a violent felony in New  
18 Mexico.

19 E. In order to enhance a defendant's sentence  
20 pursuant to this section, a second or subsequent violent felony  
21 must have been committed after the defendant's conviction for  
22 the preceding violent felony.

23 ~~[E.]~~ F. As used in the Criminal Sentencing Act,  
24 ~~[(1) "great bodily harm" means an injury to~~  
25 ~~the person that creates a high probability of death or that~~

underscored material = new  
[bracketed material] = delete

1 ~~causes serious disfigurement or that results in permanent loss~~  
2 ~~or impairment of the function of any member or organ of the~~  
3 ~~body; and~~

4 ~~(2)~~ "violent felony" means:

5 ~~[(a)]~~ (1) murder in the first or second  
6 degree, as provided in Section 30-2-1 NMSA 1978;

7 (2) voluntary manslaughter, as provided in  
8 Section 30-2-3 NMSA 1978;

9 (3) third degree aggravated battery, as  
10 provided in Section 30-3-5 NMSA 1978;

11 (4) second or third degree shooting at a  
12 dwelling or occupied building, as provided in Section 30-3-8  
13 NMSA 1978;

14 ~~[(b)]~~ (5) second or third degree shooting at  
15 or from a motor vehicle [resulting in great bodily harm], as  
16 provided in [Subsection B of] Section 30-3-8 NMSA 1978;

17 (6) third degree aggravated battery against a  
18 household member, as provided in Section 30-3-16 NMSA 1978;

19 ~~[(c)]~~ (7) first degree kidnapping [resulting  
20 in great bodily harm inflicted upon the victim by his captor],  
21 as provided in [Subsection B of] Section 30-4-1 NMSA 1978; [and

22 ~~(d)]~~ (8) aggravated, first or second degree  
23 criminal sexual penetration, as provided in [Subsection C or  
24 Paragraph (5) or (6) of Subsection D of] Section 30-9-11 NMSA  
25 1978; [and

.175932.1

underscored material = new  
[bracketed material] = delete

1                   ~~(e)~~ (9) second or third degree criminal  
2 sexual contact of a minor, as provided in Section 30-9-13 NMSA  
3 1978;

4                   (10) first or second degree robbery, [while  
5 armed with a deadly weapon resulting in great bodily harm] as  
6 provided in Section 30-16-2 NMSA 1978 [and Subsection A of  
7 Section 30-1-12 NMSA 1978];

8                   (11) second degree aggravated arson, as  
9 provided in Section 30-17-6 NMSA 1978;

10                   (12) aggravated assault upon a peace officer,  
11 as provided in Section 30-22-22 NMSA 1978;

12                   (13) assault with intent to commit a violent  
13 felony upon a peace officer, as provided in Section 30-22-23  
14 NMSA 1978; and

15                   (14) third degree aggravated battery upon a  
16 peace officer, as provided in Section 30-22-25 NMSA 1978."

17                   Section 2. EFFECTIVE DATE.--The effective date of the  
18 provisions of this act is July 1, 2009.